



September 25, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2002-5385

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169372.

The Texas Department of Criminal Justice (the "department") received a request for "the Death Packet" for a named inmate. You state that you have provided the requestor with some responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments made on the requestor's behalf. Gov't Code §552.304.

We note that, although the request is for "the Death Packet," the information that you have submitted as responsive consists of a completed criminal investigation into the death of the named inmate. The Public Information Act (the "Act") does not require a governmental body to create or prepare new information in responding to a request for information. *See* Attorney General Opinion JM-672; *see also* Open Records Decision Nos. 452 (1986), 467 (1987). However, a governmental body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990); *see also* Open Records Decision No. 87 (1975). We further note that the comments received on behalf of the requestor assert that the department holds more responsive information than was released to the requestor or submitted to this office for review. Whether the department holds additional information that is responsive to the request presents a fact issue. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592

at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). Thus, as you deem the submitted information to be the only information responsive to this request, we will rely on your representation and consider your arguments with respect to that information.

You first assert that a portion of the requested information consists of confidential medical records. The release of medical records is governed by the Medical Practice Act (the "MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

When a patient is deceased, his personal representative may consent to the release of his records. Occ. Code § 159.005(a)(5). This consent must be written and signed by the personal representative and must specify (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Occ. Code § 159.002(c); Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). For your convenience, we have marked the medical record subject to the MPA.

We next address your argument that the remaining information is excepted from disclosure by section 552.134 of the Government Code. Section 552.134 relates to inmates of the department. This exception provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). The legislature explicitly made section 552.134 subject to section 552.029. *Id.* Section 552.029 provides, among other things, that basic information regarding the death of an inmate in custody must be released. *Id.* § 552.209(8). The basic information subject to release under 552.029(8) includes the time and place of the incident, the names of the inmates and department employees who were directly involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Therefore, we find that the department must release any "basic" information regarding this death that has not already been provided to the requestor. However, we conclude that the department must withhold the remaining information under section 552.134. As we are able to make this determination, we need not address your remaining arguments.¹

In summary, the medical record we have marked may be released only in accordance with the MPA. The department must release any "basic" information regarding this death that has not already been provided to the requestor, and must withhold all remaining information under section 552.134.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

¹We note that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 169372

Enc. Submitted documents

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